89-1135

No.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ROSE M. WEBER, the ROSE M. WEBER TRUST, GERALYN WEBER HILGERT LINDA WEBER STELLER, PATRICE WEBER MARCIANO and STEPHEN G. WEBER,

Petitioners,

vs.

JOHN W. KLUGE, STUART SUBOTNICK, ROBERT M. BENNETT, GEORGE H. DUNCAN, THOMAS T. GOLDSMITH, JANE PICKENS HOVING, WARREN H. LASKER, JOHN LOMENZA, METROMEDIA COMPANY, successor to METROMEDIA, INC. and JWK ACQUISITION CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SUPREME COURT OF NEW JERSEY

HENRY F. WOLFF, III*
SCHUMANN, HANLON, O'CONNOR & MCCROSSIN
Attorneys for Petitioners
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**Counsel of Record*

QUESTIONS PRESENTED FOR REVIEW

1. Whether due process requires that absent parties to a shareholder class action suit, which challenged a leveraged buy out of a publicly held company, be given the right to "opt out" of the class action.

2. Whether under Article IV of the United States Constitution full faith and credit should be given to a class action judgment approving a settlement, which was entered before new facts giving rise to the claims in suit could have been known.

LIST OF PARTIES

Parties Plaintiff

Rose M. Weber

Rose M. Weber Trust

Geralyn Weber Hilgert

Linda Weber Steller

Patrice Weber Marciano

Stephen G. Weber

Parties Defendant

John W. Kluge

Stuart Subotnick

Robert M. Bennett

George H. Duncan

Thomas Goldsmith

Jane Pickens Hoving

Warren H. Lasher

Joseph P. Lomenza

Metromedia Co. (successor to Metromedia Inc. and JWK Acquisition Corp.)

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See Appendix for full text of lower court opinions.

JURISDICTIONAL GROUNDS

The judgment of the state court sought to be reviewed is the Order of the Supreme Court of New Jersey, filed on October 5, 1989, denying the plaintiffs' Petition for Certification.

Jurisdiction is conferred upon this Court under the provisions of 28 U.S.C. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

1. Article IV of the United States Constitution.

2. The 14th Amendment to the United States Constitution.

See Appendix for full text.

STATEMENT OF THE CASE

This case involves the leveraged buy out of Metromedia Inc. (Metromedia) by a management group headed by the respondent, John W. Kluge, the former chief executive officer of Metromedia. The plaintiffs are former shareholders of Metromedia, who sold their shares after the management group had formally announced their intentions to "take the company private". The petitioners contend that material misrepresentations were made in the Proxy Statement/Prospectus by management concerning the value and prospects of Metromedia, which ultimately enabled management to steal the company from its shareholders for an inordinately low price. As a result management was able to reap a gain in excess of three billion dollars, which otherwise would have been realized by the shareholders, by systematically selling the bulk of the company's assets, in a complete reversal of the expressed rationale for the leveraged buy out.

The merits of this case were never reached as the trial court on motion for summary judgment determined that a consent judgment, which settled a shareholder's class action brought in Delaware challenging the leveraged buy out, precluded the case at bar. The petitioners opposed the motion for summary judgment on the grounds that under *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), 86 L. Ed 2d 628,105S.Ct. 2965 (1985) the Delaware class action should have given them the right to "opt out" of the suit. The petitioners also contended that Article IV of the United States Constitution does not require a state to give full faith and credit to class action judgments where the class members did not have a meaningful opportunity to litigate the merits of their claim. This argument was based upon the fact that the true value of Metromedia and the real intentions of management did not become apparent until after settlement of the class action. Notwithstanding these arguments, the trial court entered summary judgment against the petitioners on July 8, 1988. The petitioners appealed the trial court's decision for the same reasons, but the Appellate Division affirmed the lower court on May 30, 1989. Thereafter, the New Jersey Supreme Court denied the petitioners' Petition for Certification.

The class action suit was brought in the Delaware state court in December of 1983 shortly after the leveraged buy out was announced. It was settled less than six months later by a consent judgment, which is now asserted as a bar to this claim. The shareholders of Metromedia were not given the right to "opt out" of the class action suit and, thus, were faced with the eventual choice of accepting the settlement offered by management and approved by the Delaware Court, (a package of cash, warrants and junk bonds valued at $38.00 per share) or selling their shares on the open market. The petitioners sold their shares and, like all of the shareholders of Metromedia, were deprived of their share of the profits made when Metromedia was later put up for sale.

REASONS WHY CERTIORARI SHOULD BE GRANTED

This case presents the spectacle of a shareholder class action being used, not for the protection of aggrieved shareholders as intended, but for the protection of management, which enriched itself by systematically selling the assets of Metromedia for roughly six times what it paid. Surely, the Delaware class action which challenged the fairness of the Metromedia leveraged buy out should not be used as a shield to deflect the legitimate claims of shareholders and, in effect, accomplish the very thing it purportedly sought to prevent. Yet that is exactly what the lower courts have done by applying the doctrine of *res judicata* to preclude the case at bar. The use of the shareholder class actions to provide management with insurance against legitimate shareholder suits is not consonant with due process as required by the 14th Amendment.

The need to address the role of the class action in this context becomes even greater because of widespread public concern that leveraged buy outs are damaging the fundamental economic structure of corporate America. To the extent suits such as the case at bar deter management from snatching vibrant companies from the public sector without full and fair disclosure they should be promoted. Conversely, to the extent shareholder class action suits allow management to circumvent disclosure requirements, they should be discouraged. Article IV of the United States Constitution was never intended to prevent aggrieved parties from having their day in court.

In order to prevent abuse of shareholder class actions by management we submit that the issues concerning "opt out" rights confronted by the Court in *Phillips Petroleum Co. v. Shutts*, supra, should be reexamined. In *Phillips* the Supreme Court recognized the inequity of binding absent parties to class action judgments without affording these parties the right of removal from the litigation. Accordingly, in *Phillips* the Court held, *inter alia*, that due process required that absent parties to a class action be given the right to "opt out". Where, as here, the class action is brought and settled within months, before there was any opportunity to learn of the inadequacy of the settlement

or of the material misrepresentations of management, "opt out" rights are essential.

Shareholder class actions pose special problems for the administration of justice. When such suits, which are the inevitable by-product of corporate mergers and acquisitions, are used as collusive tools of management, strict adherence to the principles of *res judicata* as mandated by "full faith and credit" runs directly afoul of due process. Where the shareholder class action rubber stamps the actions of management without providing a meaningful adjudication of the merits (in the case at bar such an adjudication was not possible), that judgment cannot be accorded full faith and credit without depriving an aggrieved shareholder of a valuable property right and, therefore, of due process.

It is, of course, a condition precedent to the application of "res judicata" that the judgment of the rendering state address the merits of the case and that each party be given a real opportunity to address the issues. *Lee v. Swain Bldg. Materials*, 529 So. 2d 188 (Miss. 1988). The Delaware class action suit did not and could not have addressed the merits of the petitioners' claims, which were unknown at that time. Class action judgments entered without due process of law are not entitled to full faith and credit. *Hansberry v. Lee*, 311 U.S. 2, 85 L. Ed. 22, 61 S. Ct. 3115 (1940). We are asking this court to determine whether sufficient procedural safeguards were observed in the Delaware class action so as to preclude the case at bar. We also ask this Court to reexamine the *Phillips* case to determine whether due process requires "opt out" rights in certain types of shareholder litigation.

Respectfully submitted,

Schumann, Hanlon,
O'Connor & McCrossin

By: _____
Henry F. Wolff, III

APPENDIX

SUPREME COURT OF NEW JERSEY
C-197 September Term 1989

ROSE M. WEBER, etc., et al., 30,677

Plaintiffs-Petitioners,

vs. ON PETITION FOR CERTIFICATION

JOHN W. KLUGE, et al.,

Defendants-Respondents.

To the Appellate Division, Superior Court,

A petition for certification of the judgment in A-6065-87T5 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal in the within matter is dismissed pursuant to *R.* 2:12-9.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 3rd day of October, 1989.

/s/ Stephen W. Townsend

Stephen W. Townsend
CLERK OF THE SUPREME COURT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-6065-87T5

ROSE M. WEBER, the ROSE M. WEBER TRUST; GERALYN WEBER HILGERT, LINDA WEBER STELLER, PATRICE WEBER MARCIANO and STEPHEN G. WEBER,

Plaintiffs-Appellants,

v.

JOHN W. KLUGE, STUART SUBOTNICK, ROBERT M. BENNETT, GEORGE H. DUNCAN, THOMAS T. GOLDSMITH, JANE PICKENS HOVING, WARREN H. LASHER, JOHN P. LOMENZO, METROMEDIA COMPANY, successor to METROMEDIA, INC. and JWK ACQUISITION CORPORATION,

Defendants-Respondents.

Argued May 3, 1989 - Decided May 30, 1989

Before Judges Gaulkin, R.S. Cohen and A.M. Stein.

On appeal from the Superior Court, Law Division, Hudson County.

Henry F. Wolff, III argued the cause for appellants (Schumann, Hession, Kennelly & Dorment, attorneys, Mr. Wolff and Louis E. Della Torre of counsel).

Robert S. Smith, admitted *pro hac vice*, argued the cause for respondents (Gelman & McNish, and Paul, Weiss, Rifkind, Wharton & Garrison, attorneys, Mr. Smith of counsel, and Jill L. McNish on the brief).

PER CURIAM

Former stockholders of Metromedia, Inc., a Delaware Corporation, brought this action for damages against a management group that took the corporation private in a leveraged buyout of the public stockholders. The Law Division granted defendants' motion for summary judgment, holding that plaintiffs' action was barred by the prior settlement of a class action in Delaware which had sought to block the buyout and which was settled for additional per-share payments to the stockholders.

We affirm essentially for the reasons stated by Judge Ariel A. Rodriguez in his oral opinion of July 8, 1988. We add only the following brief comments.

Plaintiffs take three positions before us. The first is that *Phillips Petroleum Co. v. Shutts*, 472 *U.S.* 797 (1985) bars *res judicata* effect unless the prior class action procedures afforded class members "opt-out" rights. Not so. *Phillips* is carefully self-limited in application to class actions which are brought wholly or predominantly for money judgments. Here, the Delaware suit was for equitable relief, and we see no reason to extend *Phillips* to such a case. We need not deal with the issue of retroactive application of *Phillips*.

Plaintiffs' second position is that because their New Jersey action was based on facts occurring after the Delaware settlement and seeks damages and not equitable relief, it should not be barred. We disagree. The later occurring facts are alleged by plaintiffs to be confirmations of the contentions made by the Delaware plaintiffs, namely, that the management group

fraudulently failed to disclose the true value of the corporation, its assets and its prospects. Essentially, plaintiffs here say, "we told you so, and it is worse than anybody thought." Such alleged confirmations of earlier contentions are not sufficient to bar application of doctrines of preclusion. Conceivably, they might persuade the Delaware courts that the class members deserve relief from their settlement (we express no view), but they do not remove plaintiffs from the class or otherwise form the basis for relief here.

Finally, plaintiffs point out that they sold their stock before the settlement. That is of no consequence, because the class was fixed before they sold.

Affirmed.

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Attorneys for Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – HUDSON COUNTY
Docket No. W-002443-87

ROSE M. WEBER, THE ROSE M. WEBER TRUST, GERALYN WEBER HILGERT, LINDA WEBER STELLER, PATRICE WEBER MARCIANO and STEPHEN G. WEBER,

Plaintiffs,

vs.

JOHN W. KLUGE, STUART SUBOT NICK, ROBERT M. BENNETT, GEORGE H. DUNCAN, THOMAS T. GOLDSMITH, JANE PICKENS HOVING, WARREN H. LASHER, JOHN P. LOMENZO, METROMEDIA COMPANY, successor to Metromedia, Inc., and JWK ACQUISITION COMPANY,

Defendants.

Civil Action

JUDGMENT

This matter having been brought before the Court on the application of defendants for summary judgment; the Court having read the papers submitted in support of and in opposition to this application; and the Court having also heard oral argument; and good cause appearing,

It is on this 8 day of July, 1988

ORDERED that summary judgment be and the same hereby is entered in favor of defendants. This Judgment is entered wtih prejudice.

/s/ Ariel A. Rodriguez,
ARIEL A. RODRIGUEZ, J.S.C.

With that in mind, your Honor, I would think that the *Shotz* exemption does not apply in this case.

THE COURT: Anybody else?

MR. SMITH: No. Thank you.

THE COURT: This is the defendants' motion for summary judgment.

The plaintiffs are all former shareholders of Metromedia, and the defendants are partly the management group of Metromedia, partly a special committee which was appointed to review the buyout and merger of Metromedia, as well as Metromedia Company and J.W.K. Acquisition Corporation, which was a corporation which merged with Metromedia.

I presume J.W.K. stands for the initials of John W. Kluge, who was the prime mover behind the management group for the merger and the buyouts.

The Court finds the following facts which are basically uncontroverted:

In December of 1983, the management group announced its intention that the public stock would be bought out by the management group primarily, and that the company would become private.

A special committee was appointed by the Board of Directors to look into the proposed buyout and merger. In addition to that, accountants and other firms were retained to advise on the fairness of the proposed buyout and merger.

After that announcement was made by the management group, nine shareholder suits were initiated in the State of Delaware. Those suits were ultimately consolidated into one action. The suits were seeking to enjoin the merger.

The plaintiffs in those different suits in Delaware then sought permission to proceed as a class action, and that permission was granted. The class was defined as the shareholders of record as of May 7, 1984.

The plaintiffs in the New Jersey action clearly come within that class. They were shareholders of record as of May 7, 1984. The plaintiffs in the consolidated Delaware action, therefore, were similarly situated parties to the plaintiffs in this action.

In the Delaware action, the plaintiffs claim that under the proposed buyout, they were receiving an inadequate sum for their stock, that there was a breach of fiduciary duty, that there was a failure to discuss the material facts.

In March of 1984, all of the parties in the Delaware action reached a settlement. All of the plaintiffs includes the plaintiffs who, as I indicated before, were members of the same class and similarly situated to the plaintiffs in the New Jersey action.

That agreement of understanding, which was reached between the parties, was eventually filed with the Delaware Chancery Court and approved by the Court pursuant to Delaware law. The Court's approval followed a hearing in which members of the plaintiffs' class were notified and given their notice that they would have an opportunity to be heard.

The New Jersey plaintiffs chose not to object. They were not among the objectors in the Delaware action. There were apparently some objectors, and the Court, despite their objections, approved the settlement. The final judgment of the Chancery Court of Delaware dismissed with prejudice any claims which were or could have been raised and which arose out of the action.

Now the New Jersey plaintiffs bring this action. There are four counts in the New Jersey action pending before the Court.

Count 1 largely alleges false representations in the proxy statement; specifically, that the future stock prices would fall to afford the opportunity to expand and upgrade its operation, and that

was the reason why Kluge and the management group wanted to take the stock privately. The plaintiffs allege that that was a false representation.

However, if you look at paragraphs seventeen, eighteen and nineteen of the Delaware action, while it isn't said in precisely the same language, those allegations are contained in that complaint in essence.

With respect to Count 2 of the New Jersey action, which alleges failure to disclose the true value of Metromedia, the Court has analyzed paragraphs fifteen, twenty, twenty-one and twenty-four of the Delaware action, and it finds that those allegations were raised therein.

Count 3 in New Jersey alleges a breach of fiduciary duty on the part of the members of the Board and the management group which was a part of the Board. That is also alleged in paragraphs fifteen and twenty-four of the Delaware action.

Lastly, in Count 4, there is an allegation as to the members of the special committee, that they failed to adequately review, evaluate and make recommendations, and paragraph twenty-three of the Delaware complaint raises the same issue.

It is clear that any action based on allegations raised in the Delaware case which were settled and of which plaintiffs in the New Jersey action were members of the class cannot be relitigated again in New Jersey. The settlement of the class action acts as a bar, and these plaintiffs are bound by it, except that plaintiff is making the argument that the failure to provide an opt out provision in the class action in Delaware results in a denial of due process, and the Court should not enforce the class action judgment.

He cites for that proposal *Phillips Petroleum Company v. Shotz*, 472 U.S. 797. That argument, while it has some appeal, the Court finds is not applicable to this case.

First of all, the plaintiffs in New Jersey, although notified of the Delaware action, did not choose to in any way participate or challenge or raise the issue in Delaware that they did not have the opportunity to opt out. They now seek collaterally in another action in another state to raise an argument which they could have raised in the Delaware action and did not.

I recognize that the *Phillips Petroleum* case was decided after the settlement in the Delaware action, but that is not a reason why the plaintiffs could not have raised the unavailabity of an opt out provision if that's what they wanted to do.

In other words, if plaintiffs had really wished to opt out in the Delaware action, having had notice, having realized that the notice was deficient because to them there was no opt out provision, they could have challenged it in that forum. Instead, they chose several years later to challenge the Delaware action on grounds that they may very well not have exercised in the Delaware action.

They cannot say we would have opted out when, in fact, there is no evidence that they did, and they were members of the class who received notice and knew of the existence of the Delaware action.

With respect to the retroactivity argument, I agree with Counsel that the *Phillips Peetroleum* case should not be given retroactive application. It was a first impression. It was the first expression by any court that fundamental due process required that in a class action, an opt out provision be included.

The Court finds without merit the plaintiffs' argument that it sold the stock. Therefore, there was no jurisdiction in Delaware because they had sold the stock.

The fact that they sold the stock was immaterial. They were members of the class as defined, and they are bound by the settlement of which other plaintiffs similarly situated to them were a party.

Likewise, the same argument is raised with respect to the effect of the judgment on them. That they are not bound by the judgment because they had sold their stock doesn't negate the fact they were members of the class.

Having said all of that, I am satisfied that the prior Delaware action binds the plaintiffs, that the allegations of the complaint pending in New Jersey are the same as the allegations made in the consolidated actions in Delaware and, therefore, the defendants motion for summary judgment should be granted.

Did you submit a proposed order?

MS. McNISH: I believe we did, your Honor. I have to check.

THE COURT: Okay. I am signing the judgment at this time.

MS. McNISH: I guess I did.

THE COURT: You will receive it in due course through the mail in a couple of days.

Okay, ladies and gentlemen. Thank you.

MR. SMITH: Thank you. I did promise the unreported decisions. Do you want them, Judge?

THE COURT: Yes. I might as well have them. They come too late, and obviously I didn't consider them when I gave my decision, but I would like to have them.

Thank you.

MR. SMITH: Thank you.

CERTIFICATE

I hereby certify the foregoing to be a true and accurate transcript of the proceedings had in the above-entitled matter.

/s/ Winifred A. Handel

WINIFRED A. HANDEL, C.S.R.
CERTIFICATE NO. XI00421

Dated: August 26, 1988

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SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY: LAW DIVISION

Rose M. Weber, the Rose M. Weber Trust; Geralyn Weber Hilgert, Linda Weber Steller, Patrice Weber Marciano and Stephen G. Weber Plaintiff,	:	Docket No.
v.	:	
John W. Kluge, Stuart Subotnick, Robert M. Bennett, George H. Duncan, Thomas T. Goldsmith, Jane Pickens Hoving, Warren H. Lasker, John P. Lomenza, Metromedia Company, successor to Metromedia, Inc. and JWK Acquisition Corporation, Defendants.	:	Civil Action COMPLAINT

The plaintiffs, by way of Complaint against the above-named defendants, say:

THE PARTIES

1. The Rose M. Weber Trust was created on or about January 3, 1984 by Rose Weber Ryan, the widow of the late Clem Weber, a former executive and director of Metromedia, Inc. ("Metromedia") and has its registered address at Three Willow Pond Road, Saddle River, New Jersey. The Rose M. Weber Trust held 123,670 shares of Metromedia, Inc prior to the sale of those shares at various dates between June 6, 1984 and June 20, 1984.

2. Rose M. Weber is the settlor of the Rose M. Weber Trust and resides at Three willow Pond Road, Saddle river, New Jersey.

3. Geralyn Weber Hilgert resides at 646 Sebbald Drive, Park Ridge, New Jersey and was formerly the owner of 100 shares of Metromedia.

4. Linda Weber Steller resides at 1117 Pamela Lane, Chesire, Connecticut and was formerly the owner of 1300 shares of Metromedia.

5. Patrice Weber Marciano resides at 46 Powhatan Path, Oakland, New Jersey and was formerly the owner of 100 shares of Metromedia.

6. Stephen G. Weber resides at 208 Bruce Court, Marathon, Florida and was formerly the owner of 200 shares of Metromedia.

7. Metromedia Company is the successor of Metromedia and both companies have, at all pertinent times, maintained their principal offices at One Harmon Plaza, in the Town of Secaucus, County of Hudson, State of New Jersey.

8. John W. Kluge was, at all pertinent times, the Chairman of the Board, Chief Executive Officer and President of Metromedia and was a majority shareholder of JWK Acquisition Corporation, the entity that acquired Metromedia through the use of a leveraged buyout. As majority shareholder of JWK Acquisition Corporation, John W. Kluge was the controlling member of the Management Group which acquired Metromedia through the leveraged buyout in question.

9. Stuart Subotnick was, at all pertinent times, a Senior Vice President of Finance and Administration of Metromedia and a member of the Management Group which acquired Metromedia through the leveraged buyout.

10. Robert M. Bennett was, at all pertinent times, a Senior Vice President of Metromedia in charge of broadcasting

production and was a member of the Management Group which acquired Metromedia through the leveraged buyout.

11. George H. Duncan was, at all pertinent times, a Senior Vice President of Metromedia in charge of telecommunications and was a member of the Management Group which purchased Metromedia through the leveraged buyout.

12. Thomas T. Goldsmith was a member of the Special Committee appointed by the Board of Directors of Metromedia to study, review, evaluate and make recommendations with respect to the leveraged buyout.

13. Jane Pickens Hoving was a member of the Special Committee appointed by the Board of Directors of Metromedia in order to study, review, evaluate and make a recommendation with respect to a leveraged buyout.

14. Warren H. Lasker was a member of the Special Committee appointed by the Board of Directors of Metromedia in order to study, review, evaluate and make a recommendation with respect to the leveraged buyout.

15. John P. Lomenza was a member of the Special Committee appointed by the Board of Directors of Metromedia in order to study, review, evaluate and make a recommendation concerning the leveraged buyout.

BACKGROUND AND OPERATIVE FACTS

1. Metromedia was, at all pertinent times a publicly held corporation, traded on the New York Stock Exchange, which was in the business of broadcasting, telecommunications, outdoor advertising and entertainment. In November, 1983, John W. Kluge entertained consideration of effecting a leveraged buyout of Metromedia by which he and certain other members of Management Group would purchase all of the outstanding shares of Metromedia, thereby making Metromedia a privately held corporation, completely controlled by John W. Kluge.

2. On December 6, 1983, a public announcement was made that the Management Group had proposed to the Board of Directors of Metromedia a leveraged buyout by means of a merger of Metromedia into JWK Acquisition Corporation, a corporation owned and entirely controlled by the Management Group.

3. In order to effect the aforesaid proposal on or about May 21, 1984 a Proxy Statement/Prospectus was furnished to shareholders of Metromedia in which pertinent aspects of the leveraged buyout were described at length and in which the shareholders of Metromedia common stock were offered a price of $30.00 and certain high risk debentures known as "junk bonds" for the sale of each share of common stock owned. The proposed transaction will be referred to hereafter as the leveraged buyout.

4. Pursuant to the proposed leveraged buyout a Special Committee was appointed by the Board of Directors to study, review evaluate and make recommendations as to the fairness of the transaction. The Special Committee retained Lehman Brothers and Bear, Stearns, who are experienced investment bankers, to lend their advice as to the fairness of the "leveraged buyout" to the owners of Metromedia common stock. The Proxy Statement/Prospectus represented that both Bear, Stearns and Lehman Brothers considered the transaction to be fair.

5. The Special Committee also appointed Peat, Marwick and Mitchell to act as auditors in determining the value of the company. Peat, Marwick and Mitchell represented in the Proxy Statement/Prospectus that Metromedia had a book value of $1.3 billion less $900,000 in liabilities.

6. On or about June 20, 1984 at the annual meeting, the shareholders approved the leveraged buyout, as a result of which, the Management Group and, in particular, the named defendants herein, who were members of the Management Group, became the owners of virtually all the outstanding common stock of Metromedia

7. Beginning in May, 1985, the Management Group began a program under which the many and varied assets of Metromedia were sold. As a result of the sale of substantially all of the assets of Metromedia, a total $4.65 billion dollars was realized, which substantially enriched the Management Group to the detriment of the plaintiffs.

FIRST COUNT

1. The plaintiffs repeat and reiterate each and every allegation heretofore set forth as if restated herein at length.

2. The Proxy Statement/Prospectus contained the following representations either express or implied:

(a) that the purpose and reason for the leveraged buyout, was the Management Group's belief that it was in the best interest of Metromedia to expand, enhance and upgrade certain areas of its business to create future values not presently existing;

(b) that because of the dependence of the price of the stock of Metromedia on earnings, any such expansion, enhancement or upgrading of Metromedia would have a detrimental effect on the price per share of Metromedia because of the increased debt;

(c) that because of this detrimental effect on the price per share of Metromedia, it was in the best interest of the shareholders to accept the consideration offered by the Management Group in the leveraged buyout;

(d) that the leveraged buyout was fair to the shareholders from a financial point of view;

(e) that the price offered under the terms of the leveraged buyout reflected fair and adequate consideration and was not based upon information, plans or factors not fully disclosed in the Proxy Statement/Prospectus.

(f) that under a projection of earnings, if the contemplated new investments were made, there would be a net loss of $11,200,000 in 1985.

3. The said representations were repeated in Schedule 13e-3 to the same force and effect.

4. The said representations contained in the Proxy Statement/Prospectus and in Schedule 13e-3 were material to the decision of all shareholders and, in particular, to the plaintiffs as to whether to sell the stock of Metromedia on the open market, to oppose the leveraged buyout or to vote in favor of the leveraged buyout, and it was intended by the defendants that the representations be relied on by the shareholders in reaching a decision on those issues.

5. The representations contained in the Proxy Statement/Prospectus were intentionally false in that the Management Group did not intend to undertake the investments contemplated in the Proxy Statement/Prospectus, but instead intended to liquidate the company by a sale of its assets and in that the price offered for each share of the common stock of Metromedia did not reflect a true and accurate value and was, therefore, not fair.

6. In reliance upon the representations of the defendants as aforesaid, between June 6, 1984 and June 20, 1984, the plaintiffs, sold their shares of Metromedia at varying dates for the aggregate sum of $4,612,842.00.

7. In May, 1985, less than one year after the leveraged buyout, the Management Group sold certain television stations of Metromedia for approximately two billion dollars and, thereby, commenced a program under which substantially all of the many and varied assets of Metromedia were sold on the open market. As a result of the sale of the assets of Metromedia, a total $4.65 billion dollars was realized, which substantially enriched the Management Group to the detriment of the plaintiffs. The shares of common stock of Metromedia which the plaintiffs formerly owned would have had a liquidated value of $25,173,522, had they not sold in June, 1984. Therefore, based upon the price per share realized by the Management Group from the sale of the assets of Metromedia, the plaintiffs sustained an aggregate monetary loss of $20,560,680.00.

WHEREFORE, the plaintiffs demand judgment against the defendants (a) for money damages of $20,560,680.00 together with interest and costs of suit and (b) for punitive damages.

SECOND COUNT

1. The plaintiffs repeat and reiterate each and every allegation of the First Count of the Complaint as if set forth herein at length.

2. At all pertinent times and, in particular, prior to the consummation of the leveraged buyout on June 24, 1984 the defendants in their capacity as corporate insiders knew that the true value of Metromedia was greatly in excess of that offered to Metromedia shareholders, including the plaintiffs, in the leveraged buyout.

3. The defendants intentionally failed to disclose the true value of Metromedia in the Proxy Statement/Prospectus, in the SEC Rule 13e-3 schedule or in any other document distributed to the shareholders of Metromedia as it was the defendants intention to realize a substantial gain at the expense of the shareholders by purchasing Metromedia at a price under its true value.

4. The intentional undervaluation of Metromedia constitutes a fraud upon the plaintiffs in that the undervaluation was an intentional misrepresentation intended and designed to induce the plaintiffs to sell their shares of the common stock of Metromedia.

5. As a result of the defendants failure to disclo e the true value of Metromedia and the intentional undervaluation thereof, the plaintiffs sold shares on the open market to their substantial detriment.

WHEREFORE, the plaintiff demands judgment for: (a) money damges of $20,560,680.00 together with interest and costs of suit; and (b) for punitive damages.

THIRD COUNT

1. The plaintiffs repeat and reiterate each and every allegation of the First and Second Counts of the Complaint as if set forth herein at length.

2. The defendants as officers and directors of Metromedia owed a fiduciary duty to the shareholders of Metromedia and, in particular, to the plaintiffs, to protect the interest of those shareholders, and not to prefer their interests over those of the shareholders.

3. In proposing the leveraged buyout at a price, which was not reflective of the true value of Metromedia, in failing to disclose the true purpose of the leveraged buyout and in failing to disclose material facts relating to value, the defendants breached their fiduciary duty as aforesaid.

4. As the result of the breach of fiduciary duty as aforesaid, the plaintiffs sold their shares in Metromedia on the open market to their substantial detriment.

WHEREFORE, the plaintiffs demand judgment for: (a) money damages of $20,560,680.00 together with interest and costs of suit; and (b) for punitive damages.

FOURTH COUNT

1. The plaintiffs repeat and reiterate each and every allegation of the First, Second and Third Counts of the Complaint as if set forth more fully herein at length.

2. The defendants, Thomas T. Goldsmith, Jane Pickens Hoving, Warren H. Lasker and John P. Lomenza were members of the Special Committee appointed by the Board of Directors of Metromedia in order to study, review, evaluate and make recommendations concerning the leveraged buyout. As members of the Special Committee, the said defendants owed a duty to the shareholders of Metromedia and, in particular, to the plaintiffs to act in a manner commensurate with the care, skill and experience of similar professionals in this field acting in a similar capacity.

3. The said defendants negligently and carelessly failed to adequately review, evaluate and make recommendations concerning the proposed leveraged buyout in that they did not advise the shareholders of Metromedia and, in particular, the plaintiffs that the proposed price was inadequate and not reflective of the true value of Metromedia.

4. As a result of the negligence and carelessness of the defendants, the plaintiffs have sustained the pecuniary damages as aforesaid.

WHEREFORE, the plaintiffs demand judgment for: (a) money damages of $20,560,680.00 together with interest and costs of suit; and (b) for punitive damages.

KRAFT & HUGHES
Attorneys for Plaintiffs

BY: /s/ Henry F. Wolff, III
HENRY F. WOLFF, III

CERTIFICATION

I hereby certify pursuant to Rule 4:5-1 that to the best of my knowledge the within matter is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated.

/s/ Henry F. Wolff, III
HENRY F. WOLFF, III

Dated: July 31, 1987

Gelman & McNish
A Professional Corporation
401 Hackensackk Avenue
Hackensack, New Jersey 07601
(201) 489-1772
Attorneys for Defendants

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY: LAW DIVISION
Docket No. W-002443-87

Rose M. Weber, the Rose M. Weber Trust; Geralyn Weber Hilgert, Linda Weber Steller, Patrice Weber Marciano and Stephen G. Weber Plaintiff, v. John W. Kluge, Stuart Subotnick, Robert M. Bennett, George H. Duncan, Thomas T. Goldsmith, Jane Pickens Hoving, Warren H. Lasker, John P. Lomenza, Metromedia Company, successor to Metromedia, Inc. and JWK Acquisition Corporation, Defendants.	Civil Action ANSWER

Defendants, for their answer to the Complaint:

THE PARTIES

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1 through 6 of the subsection of the Complaint entitled "The Parties".

EXHIBIT B

2. Deny each and every allegation in paragraph 7 of the subsection of the Complaint entitled "The Parties", except admit that Metromedia Company maintains its principal offices at One Harmon Plaza, Secaucus, New Jersey, and is the successor of Metromedia, Inc. ("Metromedia").

3. Deny each and every allegation in paragraph 8 of the subsection of the Complaint entitled "The Parties", except admit that John W. Kluge was the Chairman of the Board, Chief Executive Officer and President of Metromedia, was a majority shareholder of JWK Acquisition Corporation and was a member of a management group which acquired the stock of Metromedia through a leveraged buyout.

4. Deny each and every allegation in paragraph 9 of the subsection of the Complaint entitled "The Parties," except admit that Stuart Subotnick was a Senior Vice President of Finance and Administration of Metromedia and was a member of a management group which acquired the stock of Metromedia through a leveraged buyout.

5. Deny each and every allegation in paragraph 10 of the subsection of the Complaint entitled "The Parties," except admit that Robert M. Bennett was a Senior Vice President of Metromedia and was a member of a management group which acquired the stock of Metromedia through a leveraged buyout.

6. Deny each and every allegation in paragraph 11 of the subsection of the Complaint entitled "The Parties", except admit that George H. Duncan was a Senior Vice President of Metromedia and was a member of a management group which acquired the stock of Metromedia through a leveraged buyout.

7. Deny each and every allegation in paragraphs 12 through 15 of the subsection of the Complaint entitled "The Parties," except admit that Thomas T. Goldsmith, Jr., Jane Pickens Hoving, Warren H. Lasher and John P. Lomenzo were members of a Special Committee appointed by the Board of Directors to consider a proposed leveraged buyout.

BACKGROUND AND OPERATIVE FACTS

8. Deny each and every allegation in paragraph 1 of the subsection of the Complaint entitled "Background and Operative Facts," except admit that Metromedia was a publicly held corporation, traded on the New York Stock Exchange, which was in the business of broadcasting, telecommunications, outdoor advertising and entertainment, and admit that in November 1983, John W. Kluge determined to consider the desirability of a leveraged buyout of Metromedia.

9. Deny each and every allegation in paragraph 2 of the subsection of the Complaint entitled "Background and Operative Facts," except admit that Metromedia made a public announcement on December 6, 1983, and refer to that announcement for its contents.

10. Deny each and every allegation in paragraph 3 of the subsection of the Complaint entitled "Background and Operative Facts," except admit that a Proxy Statement/Prospectus, dated May 21, 1984, was furnished to shareholders of Metromedia describing a proposed leveraged buyout transaction, and refer to the Proxy Statement/Prospectus for its contents.

11. Deny each and every allegation in paragraph 4 of the subsection of the Complaint entitled "Background and Operative Facts," except admit that a Special Committee was appointed by the Board of Directors to consider the proposed leveraged buyout and admit that the Special Committee retained Lehman Brothers and Bear, Stearns to provide financial advice, and refer to the Proxy Statement/Prospectus for its contents.

12. Deny each and every allegation in paragraph 5 of the subsection of the Complaint entitled "Background and Operative Facts," except admit that Peat, Marwick and Mitchell was retained by the Special Committee and refer to the Proxy Statement/Prospectus for its contents.

13. Deny each and every allegation in paragraph 6 of the subsection of the Complaint entitled "Background and Operative

Facts," except admit that the shareholders of Metromedia approved the proposed leveraged buyout at an annual meeting held June 20, 1984, and that the proposed leveraged buyout was consummated.

14. Deny each and every allegation in paragraph 7 of the subsection of the Complaint entitled "Background and Operative Facts."

FIRST COUNT

15. Answering paragraph 1 of the subsection of the Complaint entitled "First Count," repeat and reallege their responses to each and every allegation in paragraphs 1 through 15 of the subsection of the Complaint entitled "The Parties" and to each and every allegation in paragraphs 1 through 7 of the subsection of the Complaint entitled "Background and Operative Facts".

16. Deny each and every allegation in paragraph 2 of the subsection of the Complaint entitled "First Count," except refer to the Proxy Statement/Prospectus for its contents.

17. Deny each and every allegation in paragraph 3 of the subsection of the Complaint entitled "First Count," except refer to Schedule 13e-3 for its contents.

18. Deny each and every allegation in paragraphs 4 through 7 of the subsection of the Complaint entitled "First Count."

SECOND COUNT

19. Answering paragraph 1 of the subsection of the Complaint entitled "Second Count," repeat and reallege their responses to each and every allegation in paragraphs 1 through 15 of the subsection of the Complaint entitled "The Parties," to each and every allegation in paragraphs 1 through 7 of the subsection of the Complaint entitled "Background and Operative Facts," and to each and every allegation in paragraphs 1 through 7 of the subsection of the Complaint entitled "First Count."

20. Deny each and every allegation in paragraphs 2 through 5 of the subsection of the Complaint entitled "Second Count."

THIRD COUNT

21. Answering paragraph 1 of the subsection of the Complaint entitled "Third Count," repeat and reallege their responses to each and every allegation in paragraphs 1 through 15 of the subsection of the Complain entitled "The Parties," to each and every allegation in paragraphs 1 through 7 of the subsection of the Complaint entitled "Background and Operative Facts," to each and every allegation in paragraphs 1 through 7 of the subsection of the Complaint entitled "First Count," and to each and every allegation in paragraphs 1 through 5 of the subsection of the Complaint entitled "Second Count."

22. Deny each and every allegation in paragraphs 2 through 4 of the subsection of the Complaint entitled "Third Count."

FOURTH COUNT

23. Answering paragraph 1 of the subsection of the Complaint entitled "Fourth Count," repeat and reallege their responses to each and every allegation in paragraphs 1 through 15 of the subsection of the Complaint entitled "The Parties," to each and every allegation in paragraphs 1 through 7 of the subsection of the Complaint entitled "Background and Operative Facts," to each and every allegation in paragraphs 1 through 7 of the subsection of the Complaint entitled "First Count," to each and every allegation in paragraphs 1 through 5 of the subsection of the Complaint entitled "Second Count," and to each and every allegation in paragraphs 1 through 4 of the subsection of the Complaint entitled "Third Count."

24. Deny each and every allegation in paragraph 2 of the subsection of the Complaint entitled "Fourth Count," except admit that Thomas T. Goldsmith, Jr., Jane Pickens Hoving, Warren H. Lasher and John P. Lomenzo were members of a Special Committee appointed by the Board of Directors of Metromedia to consider the proposed leveraged buyout.

25. Deny each and every allegation in paragraphs 3 and 4 of the subsection of the Complaint entitled "Fourth Count."

FIRST DEFENSE

26. The Complaint fails to state a claim on which relief may be granted.

SECOND DEFENSE

27. On June 21, 1984, several class actions consolidated under the title *Marilyn Pill and Samuel Pill, et al. v. Metromedia, Inc., et al.* (the "Class Actions") were settled and dismissed with prejudice by the Court of Chancery of the State of Delaware. Plaintiffs, to the extent they were stockholders of Metromedia as of May 7, 1984, were members of the class on whose behalf the Class Actions were brought, and received notice of the proposed settlement and dismissal.

28. The claims asserted in the Complaint in this action were asserted, or could have been asserted, on plaintiffs' behalf in the Class Actions.

29. The claims asserted in the Complaint in this action are barred by *res judicata*.

THIRD DEFENSE

30. By the terms of the Order and Final Judgment ordered on June 21, 1984 by the Court of Chancery of the State of Delaware settling the Class Actions, all members of the certified class were permanently barred and enjoined from instituting or prosecuting, either directly or representatively, or in any other capacity, any other action asserting claims against anyone which could have been asserted in the Class Actions or which arise out of the settlement or the Class Actions.

31. Plaintiffs, to the extent they were stockholders of Metromedia as of May 7, 1984, were members of the certified class. They are permanently barred and enjoined from asserting the claims asserted in the Complaint in this action.

FOURTH DEFENSE

32. By the terms of the Stipulation and Agreement of Compromise and Settlement (the "Stipulation"), dated May 15, 1984, thereafter approved by the Order and Final Judgment ordered June 21, 1984 by the Court of Chancery of the State of Delaware, all claims that were asserted or could have been asserted by any members of the certified class in the Class Actions or that arose in connection with or out of the Class Actions, or any matters referred to in the Stipulation, against any defendant or against any officers, directors, agents, attorneys, representatives, affiliates, general and limited partners of defendants or against anyone else were compromised, settled, released and dismissed with prejudice.

33. To the extent plaintiffs were stockholders of Metromedia as of May 7, 1984, the claims they asserted in the Complaint are barred by the release contained in the Stipulation, as approved by the Order and Final Judgment.

FIFTH DEFENSE

34. Plaintiffs failed to assert the claims asserted in the Complaint for approximately three years from the time of the alleged wrongdoing until the time this action was commenced.

35. Defendants relied to their detriment on plaintiffs' non-assertion of their claims.

36. Plaintiffs are guilty of laches, and are estopped from maintaining this action.

WHEREFORE, defendants demand judgment dismissing plaintiffs' complaint with prejudice and awarding defendants the costs of this action, together with attorneys' fees.

Dated: January 20, 1988

GELMAN & MCNISH
Attorneys for Defendant

By: /s/ Michael Wallstein
Michael Wallstein

Of Counsel:

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

RULE 4:5-1 CERTIFICATION

I hereby certify that no other lawsuits or arbitration proceedings have been commenced relating to the subject matter of this action, nor are any other lawsuits or arbitration proceedings anticipated. I further certify that there are no other parties who should be joined to this action.

/s/ Michael B. Wallstein
Michael B. Wallstein

DATED: January 20, 1988

CERTIFICATION OF SERVICE

I hereby certify that the within answer was served on counsel for the plaintiffs within the time prescribed by the Rules of Court and extensions to that time period which have been granted by the Court.

/s/ Michael B. Wallstein
Michael B. Wallstein

DATED: January 20, 1988

ARTICLE IV—STATES—RECIPROCAL RELATIONSHIP BETWEEN STATES AND WITH UNITED STATES

Sec.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.